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Consumer Protection

Consumer Affairs Act

Business and Professions Code §§131, 300-336, 453 (new); Government Code §§12050-12057 (repealed).

AB 2366; STATS 1970, Ch 1394

This enactment, cited as the “Consumer Affairs Act,” establishes the State Department of Consumer Affairs and declares it to be the intent of the legislature to promote and protect the interests of the people as consumers. Article three (*Sections 310, 311 and 312*) declares that the Director of Consumer Affairs, also provided for by this enactment, shall have the powers and duty to (a) recommend and propose the enactment of such legislation as is necessary to protect and promote the interests of consumers, (b) represent the consumer’s interests before federal and state legislative hearings and executive commissions, (c) assist, advise and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers, (d) conduct research on matters affecting consumer interests, (e) hold public hearings, subpoena witnesses and documents for gathering information from the public and other state agencies, (f) propose and assist in the development of consumer education programs, (g) promote ethical standards of conduct for business and consumers, (h) advise the governor and legislature on related matters, and (i) exercise other functions, powers, and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the legislature.

This Chapter also establishes a Consumer Advisory Council (*Sections 315, 316, 317, 318 and 319*) consisting of five members appointed by the Governor. Two shall be from business interests, one from labor, and two from voluntary consumer agencies. One member of the Senate and one member of the Assembly shall participate in the work of the Council to the extent that such participation does not impair their ability to function as legislators. However, these members will serve only at the pleasure of the appointing power, and for no more than two consecutive terms.

Article 4 (*Section 320*) provides that the director may intervene in any matter or proceeding before a state commission, regulatory agency,

department, or other state agency or any state or federal court, if the director finds that the determination of such matter or proceeding may substantially affect the interests of consumers in California and which does not involve the adjudication of an alleged violation by any person named as a defendant or respondent, or the suspension or revocation of any license issued by any state agency.

Article 5 (*Sections 325, 326 and 327*) makes it the duty of the director to receive complaints from consumers concerning (a) unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in the conduct of any trade or commerce, (b) the production, distribution, sale and lease of any goods and services undertaken by any person which may endanger the public health, safety or welfare, (c) violations of provisions of this code relating to business and professions licensed by any agency of the department, and regulations promulgated in accordance with this Act, and (d) other matters consistent with the purposes of this Chapter. If the Director receives complaints or information from any source indicating a probable violation of any law, order, or rule he must transmit such complaint, evidence or information to the appropriate law enforcement or regulatory agency.

Article 6 (*Sections 325 and 336*) provides for various public information programs concerning consumer information, trade practices, goods and services, test results, and legislation of interest to the consumers.

Sections repealed by this Chapter had established the Office of Consumer Council in the State Agriculture and Services Agency. The old council functioned primarily as an advisory body with little affirmative power or responsibility.

Reference:

- 1) Comment, *The Role of the North Carolina Attorney General in the Field of Consumer Protection*, 6 WAKE FOREST INTR. L. REV. 1 (1969); Boyd, *The Federal Consumer Credit Protection Act—A Consumer Perspective*, 45 NOTRE DAME LAW. 171 (1970).

Consumers Legal Remedies Act

Civil Code §§1750-1784 (new).

AB 292; STATS 1970, Ch 1550

The Consumers Legal Remedies Act applies to sales of goods or services to consumers. A consumer is defined as an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes (*Section 1761*).

Section 1770, defines 16 deceptive practices which are unlawful, including but not limited to:

- (a) Passing off goods or services as those of another;
- (b) Using deceptive representations or designations of geographic origin in connection with goods or services; and
- (c) Advertising goods or services with intent not to sell them as advertised.

Section 1780, subsection (a), provides the remedies for any consumer who suffers damage as a result or use of any of the unlawful practices in Section 1770:

- (1) Actual damages, but in no case shall the total award of damages in a class action be less than \$300.00;
- (2) Injunctive relief;
- (3) Punitive damages; and
- (4) Other relief the court deems proper.

The provisions of these Sections do not apply to any transaction which provides for the construction, sale, or construction and sale of an entire residence or all or part of a structure designed for commercial or industrial occupancy, with or without a parcel of real property or an interest therein, or for the sale of a lot or parcel of real property, including any site preparation incidental to such sale (*Section 1754*). Further, any advertising medium is eliminated from liability unless it is established that there was knowledge of the deceptive practices declared to be unlawful (*Section 1755*).

The purposes of these Sections are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection (*Section 1760*).

Section 1761 defines the following:

- (a) Goods: tangible chattels bought primarily for personal, family, or household purposes, including certificates or coupons exchangeable for such goods, and including goods which, at the time of the sale or subsequently, are to be affixed to real property as to become a part of such real property, whether or not severable therefrom;
- (b) Services: work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods;
- (c) Person: an individual, partnership, corporation, association, or other group, however organized; and

- (d) Transaction: an agreement between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

1780(b) requires an affidavit to be filed with any complaint stating facts that the action is being brought in the proper judicial district as described in the Section.

Section 1781 sets forth the requirements to bring a class action: (1) impractical to bring the entire class to court, (2) the questions of law and fact are substantially similar, (3) the claims or defenses of the representative plaintiff are typical of the class, (4) the representative plaintiffs will fairly protect the interests of the class. Any party to the action may request a hearing by the court in 10 days or more to determine if the class action is proper; if published notice to the class is necessary to adjudicate claims of the class; and if there is merit to the action. If the court at the hearing finds the action acceptable, the court may require notification of all parties of the class either personally or by appropriate public notice. All those given notice shall be members of the class unless they request exclusion. A class action cannot be settled, dismissed or compromised without the approval of the court. If compromise is made the class must be notified of such action. Any judgment shall describe all class members except those requesting exclusion.

For a recent discussion of the requirements of the existence of an ascertainable class, and a well defined community interest in the questions of law and fact, see *Daar v. Yellow Cab Co.*, [67 Cal. 2d 695 (1967)]. Federal law also provides for a class action [*Fed. Rule 23(a)*]. Both *Daar* and Rule 23a were used as guides for the class action provision.

Section 1782 requires the consumer to notify in writing the offending person 30 days before the commencement of an action for the alleged violation of Section 1770, demanding correction, repair, replacement or other rectification. An action for damages will not be maintained if the offending person can show that all of the following exist:

- (1) All consumers similarly situated have been identified or a reasonable effort to do so has been made.
- (2) All consumers so identified have been notified that upon their request such offending person shall make the appropriate remedy.
- (3) The remedy has been given within a reasonable time by the offending person to those that requested such.

- (4) The seller has ceased from engaging in such offensive methods, acts or practices, or will do so within a reasonable time if immediate cessation is impossible.

The consumer may request injunctive relief without compliance with the 30 day notice procedure. If the plea is later amended to include damages the 30 day written notice requirement as above must be met.

Attempts to comply with the provisions of this Section by a person receiving a demand shall be construed to be an offer to compromise and shall be inadmissible as evidence; furthermore, such attempts to comply with a demand shall not be considered an admission of engaging in an act or practice declared unlawful by Section 1770. Evidence of compliance or attempts to comply with the provisions of this Section may be introduced by a defendant for the purpose of showing good faith.

There is a 3 year statute of limitations from the date of the commission of such method, act, or practice (*Section 1783*).

No award of damages may be given where the seller rectified the problem and the violation was a bona fide error (*Section 1784*). (The Legislature also enacted Chapter 1348 which added Sections 1750-1757 to the Civil Code. However, these Sections are not in conflict with the Sections in Chapter 1550 and therefore Government Code §9605 will not apply. Both Chapters will become effective November 23, 1970.)

Consumer Protection; sales warranties

Civil Code §§1790-1795 (new).

SB 272; STATS 1970, Ch 1333

(Effective March 1, 1971)

Chapter 1333 adds Title 1.7 (*Sections 1790-1795*) to the Civil Code. Article 1 (*Sections 1790-1790.3*) identifies the title as the Song-Beverly Consumer Warranty Act. Any waiver of the provisions of this Act by a buyer of consumer goods, except as expressly provided, shall be unenforceable and void as it will be deemed contrary to public policy (*Section 1790.1*).

Article 2 (*Sections 1791-1791.3*) defines terms used in this Title. Consumer goods means any motor vehicle, machine, appliance, or like product that is used or bought for use primarily for personal, family, or household purposes. Distributor means any individual, partnership, corporation, association, or other legal relationship which stands between the manufacturer and the retail seller in purchases, consignments,

or contracts for sale of consumer goods. A retail seller is any individual, partnership, corporation, association, or other legal relationship which engages in the business of selling new goods to retail buyers.

Article 3 applies to sales warranties. Section 1792 provides that unless disclaimed in the manner provided by this Act, every sale or consignment of consumer goods in this state shall be accompanied by an implied warranty that the goods are merchantable [*Section 1791.1, subsection (a)*]. Section 1792.1 provides that where the manufacturer knows the buyer is purchasing consumer goods for a specific purpose and that the buyer is relying on the manufacturer's skill or judgment to select suitable goods an implied warranty of fitness shall accompany the goods [*Section 1791.1, subsection (b)*].

Pursuant to Sections 1792.3 to 1792.5 only in instances where goods are sold "as is" or "with all faults" are waivers of implied warranties permissible. To sell goods "as is" or "with all faults" the seller must clearly inform the buyer in writing. Such writing must include: (1) that the goods are being sold "as is" or "with all faults," and (2) that the entire risk as to the quality and performance of the goods is with the buyer, and (3) that should the goods prove defective, the buyer and not the manufacturer, distributor, or retailer assumes the entire cost of all necessary servicing or repair.

Sections 1793 to 1793.5 provide that a manufacturer, distributor, or retailer may make express warranties in respect to consumer goods; however, any express warranty may not limit the implied warranties guaranteed by this Chapter. Every manufacturer who sells goods within this state and makes express warranties shall maintain or cause to be maintained within this state sufficient repair facilities to carry out the terms of such warranties. If the manufacturer does not conform to this repair provision he shall be liable to every retail seller who incurs an obligation in giving effect to such express warranties. When the consumer elects to exercise a warranty for service and repairs, such service and repair must commence within a reasonable time and returned in merchantable condition within 30 days, or when circumstances beyond the manufacturer's control prevent such reasonable return the period may be extended an additional 30 days.

Pursuant to Section 1794 any buyer injured by a willful violation of this Title shall be entitled to treble damages plus reasonable attorney's fees. Section 1794.1 provides that any retail seller injured by the willful or repeated violation of the provisions of this title is entitled to treble damages, plus reasonable attorney's fees. However, these Sections are

not applicable to actions brought under Section 382 of the Code of Civil Procedure (*Representative actions*).

The provisions of this title do not apply to any defect in consumer goods caused by the unauthorized or unreasonable use of the goods following sale (*Section 1794.3*).

Any express warranties made by persons other than the manufacturer of the goods obligate the person making such warranties to the same standards and penalties of the manufacturer.

Warranties; sales of consumer goods

Commercial Code §§2800, 2801 (new).
SB 921; STATS 1970, Ch 972

Sections 2800 and 2801 are added to division 2 of the California Commercial Code, relating to commercial sales.

They provide that in any retail sale of consumer goods, a written warranty or guarantee as to the condition or quality of the goods shall not be unenforceable solely because the buyer failed to complete and return a form to the seller or manufacturer as proof of purchase of the goods. The buyer may waive the provisions of the Section, but any unwritten waiver is unenforceable and void.

Previously, a seller could expressly demand as a condition precedent to existence of a warranty that the buyer complete and return the proof of purchase form, though this condition had to be explicit in the contract of sale. Failure to do so would prevent the warranty from arising.

References:

- 1) CAL. COMM. CODE §2314, 2317.
- 2) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Sales* §23 (7th ed. 1960).

Retail Installment Credit; creditor's statement

Civil Code §1810.1 (amended).
SB 26; STATS 1970, Ch 304
(*Effective January 1, 1971*)

Section 1810.1 requires a creditor to deliver a written disclosure statement to a customer before the first transaction is made on any open end credit account (*See Unruh Act, Sections 1801-1812.10*). This statement must include an explanation of conditions under which a finance charge may be imposed, methods of determining the balance sub-

ject to finance charges and the amount of finance charges, any service charges, the annual percentage rate of interest, etc. (See Section 1810.1(a)-(g) for complete enumeration). The statement of disclosure must be clear to the consumer and written in such manner so not to confuse, mislead, or detract the customer's attention from the information required to be disclosed. [Section 1810.3(4)].

This amendment to Section 1810.1 adds the provision that until the seller delivers the required written statement of disclosure to the buyer, the buyer shall be obligated to pay only the cash price of the goods or services. Prior to this amendment a creditor who willfully violated Section 1810.1 was guilty of a misdemeanor (Section 1812.6) and was barred from recovery of any time price differential, service charge or delinquency penalties even if failure to comply was not willful (Section 1812.7). If the creditor is not willful in his failure to comply with Section 1810.1 he may correct his failure but such correction may not increase the amount owed by the buyer or the amount of any payment unless the buyer concurs in writing to the correction (Section 1812.8).

References:

- 1) 15 U.S.C.A. §§1601 *et seq.*, 1637(a).
- 2) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §167(d) (7th ed. 1960); 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Sales* §5(3), (7th ed. 1960).
- 3) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1969 CODE LEGISLATION 29.

Credit; response to debtor inquiry

Civil Code §1720 (new).

AB 433; STATS 1970, Ch 191

Section 1720 requires that a creditor under a retail installment account (*defined by Section 1718*) make a timely response to a debtor's inquiry under penalty of forfeiture of interest or service charges.

Anytime such creditor receives an inquiry from a debtor posted by certified mail to the address to which payments are normally tendered (unless another address is specified) the creditor must give a timely response. A timely response is one which is "responsive" to the inquiry, and is mailed to the last known address of the debtor within 60 days from the date on which the inquiry was mailed. Failure by the creditor to respond in this manner will cause him to suffer the loss of interest and finance charges normally accruing from the date the debtor mails the inquiry.

There were no provisions in California law for failure to respond to a

debtor's inquiry before enactment of this Section. It was felt that the provisions were necessary to aid the debtor faced by the unresponsive computerized billing systems that have become prevalent today. The legislation is similar to that of other states, particularly Maryland (*Code of Maryland, Article 83, Section 153a et seq.*) Other states have provided for a civil forfeiture as a penalty, but because of stiff opposition from the California Retailers Association it was decided to merely provide for loss of service charges.

References:

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Sales* §5 (7th ed. 1960).
- 2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1969 CODE LEGISLATION 28.

Consumer Credit Reporting Act; applicant's rights

Civil Code §§1750-1757 (new).

AB 149; STATS 1970, Ch 1348

Chapter 1348 adds Title 1.5 to Part 4 of Division 3 of the Civil Code, to be known as the Consumer Credit Reporting Act, for the purpose of clearly defining a credit applicant's rights of access to his credit records.

Section 1752 provides that, upon request and proper identification, a reporter shall clearly and accurately disclose to an applicant all information in its files on the applicant, the sources of the information, and the names of creditors to whom the reporter has furnished reports within the six months previous to the request. An "applicant" means a natural person who has made application to a creditor for extension of credit for personal, family, or household purposes rather than as a business. A "reporter" is defined as any person, partnership or corporation which, for compensation, provides a customer other than a commercial creditor with credit information or a credit rating upon an applicant. "Commercial creditors" means a person or entity which extends credit for purposes other than personal, family or household purposes.

Section 1754 provides that when the applicant is denied credit or the charge for credit is increased, wholly or partly because of information given by the reporter, the creditor shall notify the applicant of the reporter's identity provided that a written request is received from the applicant within 60 days of the applicant's learning of such action.

Section 1752 further provides that reporters are to furnish trained personnel to explain the information to the applicant. The applicant may be accompanied by one other person. However, if he chooses to

be accompanied by another person, the reporter may require the applicant to furnish a written statement granting permission to discuss the applicant's record in the presence of the designated third person.

Section 1753 provides that the disclosures are to be made during normal business hours and with reasonable notice, and are only to be made on proper identification of the applicant, whether he receives the information in person or on the telephone. Should a report made by the reporter be responsible for the refusal of credit to the applicant, the applicant shall, on payment of the usual fee received by the reporter from a nonsubscriber, receive a written report. This provision is conditional, in that the reporter's report must be either in part or wholly responsible for the denial of credit to the applicant.

A procedure to be used in settling disputes as to the accuracy of the reporter's report is outlined in Section 1755. An applicant may dispute completeness or accuracy of information in the reporter's records, and on communication of this difference in opinion to the reporter, the latter must reinvestigate and correct its records, unless it believes the complaint to be frivolous or irrelevant. If this procedure does not correct the dispute, the applicant may file a written statement with the reporter that any or all of the information is in dispute and unless there is reasonable ground to believe the statement is frivolous or irrelevant, the reporter shall clearly note in future credit reports that the information in question is disputed by the applicant. Additionally, any information found erroneous and consequently deleted by the reporter must be communicated to customers receiving copies of reports that included such erroneous information if received by them within the past six months and the applicant so requests that such notice be given.

Section 1756 provides that if the credit rating report or memorandum relates only to the applicant's ability to pay, his habit of payment, and his general credit standing, or any of these subjects, any untrue allegation of fact contained in such report, except a willful misrepresentation, shall not be grounds for any civil action or criminal prosecution.

Section 1757 provides that this Act does not apply to any credit rating report which by its terms is limited to disclosures from public records relating to land and land titles, and does not apply to any reporter whose records and files are maintained for the primary purpose of reporting those portions of the public records which impart constructive notice under the law of matters relating to land and land titles. (The Legislature also enacted Chapter 1550 which added Sections 1750-1756 to the Civil Code. However, these Sections are not in conflict with the

Sections in Chapter 1348. Therefore Government Code Section 9605 will not apply, and both Chapters will become effective November 23, 1970.)

Automobile Manufacturers, Transporters and Dealers; unlawful acts

Vehicle Code §11713 (amended).
SB 599; STATS 1970, Ch 395

Section 11713 sets out a series of acts which are unlawful for automobile dealers, transporters or manufacturers to engage in. Violation of the Section may result in the suspension or revocation of, or ineligibility for the license required by Section 11701. Typical of the unlawful acts enumerated are: turning back the odometer of a vehicle, offering for sale a vehicle not actually for sale, and false advertising.

Prior to the amendment, false advertising provision made it unlawful to intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular. This amendment expands this provision. It is now unlawful for anyone under the licensing provisions of the article to disseminate or cause the dissemination of any statement which is known, or reasonably should be known, to be untrue or misleading. The dissemination may take place in any newspaper, advertising device, "public outcry", or any other means whatever. In addition, it is unlawful to make such a statement as part of a plan with the intent not to sell or service the vehicle at the stated price.

Motor Vehicle Sales Contracts

Civil Code §§2981, 2982, 2982.5, 2982.7, 2984.3 (amended).
AB 1390; STATS 1970, Ch 1003

Chapter 1003 revises certain provisions of the Rees-Levering Motor Vehicle Sales and Finance Act which define terms used in that act, prescribe requirements for conditional sales contracts for the sale of a motor vehicle, and specify exceptions and requirements relating to loans to the buyer and the seller's assistance to the buyer in obtaining a loan.

Section 2981 amends cash price to include taxes to the extent imposed on the cash sale and the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements. Retained in the definition of cash price is the

amount for which the seller would sell and transfer to the buyer unqualified title if the motor vehicle were sold for cash at the seller's place of business on the date the conditional sale contract was executed. Before the amendment, cash price included the total amount paid to any public officer in connection with the sale of motor vehicles.

Downpayment now means that part of the cash price as described in the conditional sale contract which the buyer pays or agrees to pay to the seller at or prior to delivery of the motor vehicle. Downpayment no longer includes the cash which the buyer deposits with the seller pending execution of a conditional sale contract.

Prior to the amendment, unpaid balance was the difference between the conditional sale contract price and the downpayment plus all insurance premiums to be paid. The amendment adds to this amount the total amount paid or to be paid to any public officer in connection with the transaction and any amount paid or to be paid for license, certificate of title, and registration fees imposed by law.

Regulation Z promulgated by the Board of Governors of the Federal Reserve System under the Federal Truth in Lending Act (15 U.S.C. 1601, *et seq.*) has been added to Section 2981.

The amounts, if any, paid or to be paid to any public officer in connection with the transaction and for license, certificate of title, and registration fees imposed by law have been added to Section 2982 subsection (a) as a necessary item to be included in a conditional sale contract.

The amendment also adds three additional new subdivisions to Section 2982:

(1) If there is any required downpayment by the buyer to the seller on which no finance charge is to be imposed and such payment is made after the date of the conditional sale contract but prior to the second payment otherwise scheduled, the amount of such downpayment may be shown as a deferred portion of the cash downpayment or as a deduction from the unpaid balance, and shall be included in the total of payments as defined in Section 2981 subsection (i).

(2) Any time the vender's single interest insurance is to be written in connection with a conditional sale contract, a conditional sale contract complying with the applicable disclosure requirements of Regulation Z in effect on the date of such contract shall be deemed to comply with paragraphs 1 through 8 of subdivision (a) of this Section. However, this subdivision is not applicable for the determination of unpaid balance, finance charges or refunds.

(3) Any information required to be disclosed in a conditional sale contract under the Automobile Sales Finance Act (*Sections 2981 to 2984.4*) may be set forth in terminology required by Regulation Z, in effect at the time such disclosure is made, but nothing in this act shall be deemed to prohibit disclosure in such contract of additional information required or permitted by Regulation Z, in effect at the time such disclosure is made.

Before amended, Section 2982.5 subdivision (b) allowed the seller to assist the buyer in obtaining a loan to be used as a part or all of the downpayment or any other payment upon a conditional sale contract provided that the conditional sale contract included on its face the amount of the loan, the finance charge and the schedule of payments. Also, the seller was not to receive any commission or other remuneration for securing such loan. Any such loan was permitted to be referred to on the conditional sale contract as proceeds of the loan or other similar language.

As amended Section 2982.5 subsection (b) deletes from the face of the conditional sale contract the schedule of payments and adds a more specific provision that the number of installments scheduled to repay the loan and the amount of each installment be included. Also deleted is the phrase that the seller shall receive no commission or other remuneration for *securing* such loan for the buyer. The new addition provides that the seller shall receive no commission or other remuneration for *assisting* the buyer to obtain such loan. No longer may the loan be referred to in the conditional sale contract in terms such as proceeds or loan or in any other similar language.

The amendment to Section 2982.7 deletes the words "from any payment" and adds "any downpayment made by a buyer to a seller pending execution of a conditional sale contract shall be referred to the buyer in the event that the conditional sale contract is not executed."

There are two amendments to Section 2984.3. First, prior to the amendment, any acknowledgment by the buyer of delivery of a copy of a conditional sale contract must have been printed or written in size equal to 10-point bold type, and if contained in the contract, must have appeared directly above the space reserved for the buyer's signature. The amendment adds to delivery of a conditional sale contract, any purchase order and vehicle purchase proposal and any credit statement which the seller has required or requested the buyer to sign, and which the buyer has signed during contract negotiations.

Second, added to the Section is the provision that if a third party fur-

nishes the buyer a copy of such documents, or a notice containing items 1 to 8 of subdivision (a) of Section 2982 stating that the buyer shall notify the third party in writing within 30 days if he was not furnished a copy of such documents, and the buyer gives no such notification, it is conclusively presumed in favor of the third party that the documents were furnished as required by Rees-Levering Motor Vehicle Sales and Finance Act.

Reference:

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Sales* §§52, 53 (7th ed. 1960), (Supp. 1969). 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Security Transactions in Personal Property* §70A (Supp. 1969).

Loans; variable interest rates

Civil Code §1916.5 (new).

AB 1583; STATS 1970, Ch 1584

This Chapter adds Section 1916.5 to the Civil Code regulating variable interest rates on loans for real property with four or fewer residential units on or to be constructed thereon.

Variable interest rates are a common method employed by lending institutions to insulate themselves against the rapidly fluctuating interest rates. Currently, a promissory note secured by real property may contain a clause which allows the lending institution to raise the interest rate if the money market interest rate should increase. Section 1916.5 now provides that any provision for a variable interest rate in a mortgage contract must include the following provisions to be valid:

- 1) When an increase in the interest rate is required or permitted by the movement of a prescribed standard in a particular direction, that an identical decrease is required in the interest rate by a movement of the prescribed standard in the opposite direction. Hence, though lenders may provide for increasing interest rates when the prescribed standards used to measure interest rates go up, they must also decrease interest rates should the prescribed standards go down.
- 2) The rate of interest shall not change more often than semi-annually.
- 3) The change in the interest rate shall not exceed 1/4 of 1 percent in any semi-annual period.
- 4) The borrower is permitted to prepay the loan in whole or in part without a prepayment charge within 90 days of notification of any increase in the rate of interest.

5) The variable interest rate provision must be clearly and prominently disclosed in writing to the borrower prior to the time the loan is made and shall be set forth both in the promissory note and the mortgage or deed of trust.

Furthermore, this Chapter permits the Savings and Loan Commissioner, the Superintendent of Banks, and the Insurance Commissioner to adopt with respect to those financial institutions under their supervision the prescribed standards upon which variations in the interest rate shall be based.

Retail Installment Sales; liens on real property

Civil Code §1804.3 (amended).

AB 1594; STATS 1970, Ch 1483

Section 1804.3 is amended to provide that any retail installment contract for goods that contains a provision for a lien on real property shall be a violation of the Unruh Act if the goods contracted for are not to be attached to that real property.

Formerly, Section 1804.3 provided that no contract, other than one for services, could provide for a lien on any goods, theretofore fully paid for or which had not been sold by the seller.

Prior to the amendment this Section protected personal property, however, the omission of any reference to real property enabled merchants to sell merchandise with the sales contract, secured by a lien on the buyer's home. In some cases, foreclosures actually occurred.

One who violates the provisions of Section 1804.3 are subject to the penalties under Article 12.2 of Chapter 1, Title 2, part 4 of Division 3, (*Sections 1812.6-1812.9*).

Reference:

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Sales* §5 (7th ed. 1960); 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Sales* §5B (Supp. 1969).

Contracts; automobile storage and parking, bailments

Civil Code §§1630.5 (new); 1630 (amended).

AB 1883; STATS 1970, Ch 1277

Section 1630.5 is added to the Civil Code to provide that the provisions of any bailment contract for the parking or storage of a motor vehicle shall not exempt the bailee from liability of any motor vehicle,

when such motor vehicle is parked or stored with such bailee, and the keys are required by such bailee to be left in the parked or stored vehicle [*California State Auto. Ass'n. Inter-Insurance Bureau v. Barrett Garages, Inc.* 257 Cal. App. 2d 71 (1967)].

Section 1630 was amended to be consistent with Section 1630.5. Section 1630 relates to the standards to which a written contract of motor vehicle bailment must conform to limit the bailee's liability.

Reference:

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §34 (7th ed. 1960); (Supp. 1969); 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Personal Property* §73 (Supp. 1969).

Deposits for Repair, Alteration or Sale

Civil Code §§1858-1858.3 (new).

AB 1409; STATS 1970, Ch 1185

New Sections 1858-1858.3 of the Civil Code add provisions requiring that persons in the business of accepting personal property for purposes of repair, alteration, or sale from any customer (*a natural person who deals with the depositary for such service*) shall present the customer with a written receipt for the property. Section 1858.1 provides that if the depositary (*that person who in the ordinary course of business regularly receives property from customers for the purpose of repair or alteration*) is not insured or protected against loss by fire, theft and vandalism to the amount of the actual cash value of the property, he shall include a statement of that fact to be included on the written receipt. Section 1858.2 provides that if the depositary fails to provide such a receipt, or a statement required by Section 1858.1, that he has no insurance or other protection against fire, theft, and vandalism, or if he makes any misrepresentation in such receipt, he shall be strictly liable to the person who delivered the property to him for loss occasioned by theft, fire, and vandalism and shall also forfeit any lien or other right to hold the property arising from services rendered. When liability is imposed upon a depositary under Section 1858.3 it shall be deemed as having been imposed for the commission of a willful act for the purposes of Section 533 of the Insurance Code, (*Insurer not liable for loss caused by willful act of insured*).

If the depositary is protected by insurance as provided above he need not make any notice to the customer.

References:

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Personal Property* §§59-66 (7th ed. 1960); (Supp. 1969).
- 2) Note, *Destruction of Goods While in Bailee's Possession*, 23 S. CAL. L. REV. 409 (1950).
- 3) 4A MCKINNEY'S CAL. DIG. *Bailments* §§7-9 (Supp. 1970).

Retail Food Production and Marketing Establishments

Health and Safety Code §§28800-28868 (new).

AB 323; STATS 1970, Ch 649

This Act adds Chapter 14 to Division 21 (Drugs, Foods and Cosmetics) of the Health and Safety Code. The purpose of this Chapter, stated in Section 28800, is to establish uniform statewide sanitation standards for retail food production and marketing establishments including grocery stores and all retail food establishments throughout the state, with particular emphasis on perishable foods. (*Office of the Governor, release 396, August 8, 1970*). It is the intention of the legislation to occupy the whole field of sanitation standards for retail food production and marketing establishments.

Article I (*Sections 28800-28810*) of this Chapter contains the applicable definitions. Food (*Section 28801*) is defined as all articles for human consumption, or consumption by any animal which is maintained in the home as a pet, and all ingredients in the preparation thereof. Food does not include any commercial feed as defined in Section 14902 of the Agriculture Code. Retail food production and marketing establishment is defined as any room, building, or place, or portion thereof, maintained, used, or operated for, or in conjunction with, the retail sale of food, or preparation of food. Specifically excluded from this definition are restaurants, itinerant restaurants, vehicles or vending machines (*already covered under Sections 28522-28525*), bakeries (*already covered under Section 28190*), wholesale food manufacturing, distributing or storage establishments (*already covered under Section 28280.1*), locker plants (*already covered under Section 28700*), roadside stands operated by a grower for the sale of his own produce grown in the property where the stand is located, hospitals (*Section 1401*), establishments for handicapped persons (*Section 1501*) or to official meat establishments subject to the provisions of the Agricultural Code.

Article 2 establishes requirements for the construction and maintenance of the buildings of food establishments. Adequate ventilation and lighting must be provided. Buildings must be constructed and main-

tained as to prevent the entrance and breeding of rodents and insects; control measures must be instituted if they appear. All poison and cleaning materials must be clearly labeled and separately stored.

Article 3 sets health requirements for employees to maintain and provides that the local health officer shall investigate any reports of possible disease transmission. If he has reasonable cause, the health officer may close the establishment. He may also require a medical examination of or the exclusion of any employee or owner.

Pursuant to Article 4 any authorized health officer may enter and inspect any establishment whenever it is open for business. He must make a written report of the inspection to the owner. Violation of any provision of this chapter is a misdemeanor punishable by a fine of \$25.00 to \$500.00 or by imprisonment in the county jail up to six months, or both. The owner, manager, or operator is specifically responsible for any violation by his employees.

Advertising; conditions for receipt of prizes

Business and Professions Code §17537 (new).

AB 573; STATS 1970, Ch 1119

Section 17537 is added to the Business and Professions code to make it "unlawful to notify any person by any means, as a part of an advertising plan or scheme, that he has won a prize and that as a condition of receiving such prize he must purchase or rent any other item." While not expressly included, the new Section is evidently added to the code under the general regulations of advertising, thereby making a violation of Section 17537, subject to injunction remedies, criminal penalties and civil actions of Sections 17531.9 and 17536.

Advertising; sale items, limitations on quantity

Business and Professions Code §17500.5 (amended).

SB 597; STATS 1970, Ch 1121

The Section makes it unlawful for any person, firm, corporation or association to advertise any item for sale which has a limitation on quantity sold to a single customer without a statement of such limitation in the advertisement. The article advertised without limitation must be sold to the consumer at the price advertised in any quantity then available on the premises. Refusal to do so results in liability for losses and

expenses incurred by the consumer and a fine of \$50.00. The legislation is designed to protect the individual consumer and class actions are specifically prohibited.

Prior to this addition there was a section in the Unfair Practices Act which related to quantity limitations. Section 17071.5 of the Business and Professions Code states that proof of quantity limitations together with the fact that the item offered for sale was below invoice or replacement cost raises a presumption of unfair competition. This Section did not outlaw quantity limitations or relate in any way to advertising practices. It was not designed for consumer protection.

Employment Agencies; fees

Business and Professions Code §9975 (amended).

SB 1061 STATS 1970, Ch 1138

Section 9975 provides that an employment agency, in order to receive a fee for its services, must obtain oral or written order for employment of the applicant. It further provides that this fee is collectible if the applicant receives employment with the employer to whom he is referred, even though the position is other than that specified in the employment order.

This amendment to Section 9975 provides that collateral employment must be obtained within 180 days from the date of referral, rather than within 60 days, in order for the agency to receive the fee. Testimony on the bill indicated that there have been some abuses on the part of applicants and employers who delayed the actual hiring beyond the 60 day period to avoid payment of the fee, and that it is not unusual for a time lapse of up to six months to occur in upper management positions where extensive background investigation is made.

The amendment further provides a method for resolving interagency disputes over fees where more than one agency is involved. The billing agency is mandated to make a reasonable effort to determine that it is in fact entitled to the fee charged. Also, the section now specifies that an applicant need pay only one fee for any single placement, and that this fact must be stated in the agency employment contract.